

IN THE HIGH COURT OF BOMBAY AT GOAWRIT PETITION NO. 212/2007

M/s. Madhu Continental Constructions
 Pvt. Ltd., having office at
 Madhucon House, Road No.36,
 Jubilee Hills, Hyderabad 500 033,
 through their Asst. General Manager,
 Shri N. Sahu.

..... Petitioner.

V/s.

Shri Parambidathu Checko Jose,
 major, civil Contractor,
 Marques Bldg., Mardol, Goa.

..... Respondent.

Mr. Ajit R. Kantak, Advocate for the petitioner.

Mr. Parag Rao, Advocate for the respondent.

CORAM : S.A. BOBDE, J.

DATE : JUNE 21, 2007.

ORAL JUDGMENT :

Rule, returnable forthwith. Heard by consent.

2. The petitioner has challenged the order dated 20/2/2007 passed by the Civil Judge, Sr. Division, Panaji in Special Civil Suit No.14/94/B, refusing to recall the witnesses PW.1 and PW.2 for re-examination under Order 18, Rule 17 read with Section 151 of the Code of Civil Procedure. In an old suit of the year 1994, after PW.1 and PW.2 were examined, opportunities were given on four to five occasions to the petitioner-defendant to cross examine the said witnesses. The

opportunity to cross examine was, in fact, availed of by the defendant through a junior Advocate who was working in the Chamber of an Advocate who had, admittedly, been engaged by the defendant. Having discovered now that there are certain defects in the cross examinations of PW.1 and PW.2 conducted by the junior Advocate, a plea has been taken that the junior Advocate had no authority in law to represent the defendant. A decision of the Orissa High Court in the case of ***Doki Adinarayana Subudhi and Brothers vs. Doki Surya Prakash Rao***, reported in AIR 1980 Orissa 110 is also relied on.

3. It is true that ordinarily it would not be possible to treat the acts of an unauthorised Advocate as valid. However, in the present case, the junior Advocate had appeared on five or six occasions for the same defendant and was, admittedly, working for a senior who had been engaged by the defendant. In these circumstances, there is no merit in this plea at this stage.

4. The next contention on behalf of the petitioner is that several important questions have been omitted by the junior Advocate while conducting the cross examination. That can hardly be a plea for recalling a witness under Order 18, Rule 17 of C.P.C. Indeed, theoretically there would be no end to the number of defects that may be noticed after the cross examination is over. It would be impossible to allow a party seeking recall of a witness every time when he notices such defects. It would be useful to recall the observations of learned Single Judge of this Court in the case of ***Madhubhai Amthalal v. Amthalal Nanalal and***

others, reported in AIR (34) 1947 Bombay 156, where the learned Single Judge observed as follows :

“There must, after all, be finality somewhere as regards the evidence to be taken into consideration by a Court, and if I were now to restore the case to the list for the purpose of hearing what the plaintiff has to say about an earlier statement which was fortuitously discovered last Thursday, there is no reason why the case should not be on my list next week for a similar purpose in the event of more information coming to light next Thursday, and so on *ad infinitum*; and in all the circumstances of the particular case I do not think that I ought to re-open the matter.”

4. There is no merit in this petition, which is hereby dismissed. Rule discharged.

S.A. BOBDE, J.

ssm.